

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2081 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

VEDVA VAGRI SHAMJUBEN

DHAMABHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR. PATEL, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by an order of detention passed by District Magistrate, Bhavnagar district in exercise of powers under sub-section [2] of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act']. The grounds of detention indicate that 13 offences under Prohibition Act came to be registered against the petitioner and that he was released on bail

in all these offences. After release, the petitioner re-engaged himself in his bootlegging activities. The grounds of detention also indicate that statements of some of the witnesses were recorded to indicate that the petitioner used force and intimidation for pursuing his bootlegging activities which resulted into disruption of the public order. The detaining authority recorded subjective satisfaction about the fear of the witnesses and claimed privilege u/s 9[2] of the PASA Act. The detaining authority also considered alternative less drastic remedy in form of action u/s 93 of the Prohibition Act as well as other provisions, but ultimately felt that the detention under the PASA Act was the only effective remedy to prevent the petitioner from involving into his bootlegging activities.

2. The petitioner challenged the order of detention on various grounds. The main grounds are that the detaining authority has not taken into consideration the possibility of getting the bail cancelled, granted to the petitioner. The detaining authority has missed to consider the public interest while exercising the powers u/s 9[2] of the PASA Act. That the detaining authority has ill-conceived the disturbance in public order.

3. Ms. Patel, learned advocate appearing for the petitioner while waiving all other grounds, has pressed in service only one ground, namely, non-consideration of question of cancellation of bail by the detaining authority before exercising the powers of detention. She submitted that, in view of the decision taken by a Division Bench of this Court in the case of Mulchandbhai Shobhraj Mulvani v/s Secretary, Government of Gujarat and others reported in 1991 [1] GLR 42 and in 1988 [2] GLR 1336, in the case between Vikramsinh Pravinsinh v/s State of Gujarat, the Court has held that this would amount to non-application of mind and therefore, the subjective satisfaction recorded by the detaining authority for exercise of claiming privilege u/s 9[2] of the PASA Act would stand vitiated. The petition therefore may be allowed.

4. Mr. Patel, learned AGP appearing for the respondents has opposed this petition. He was at loss to show the consideration on question of cancellation of bail by the detaining authority.

5. Considering the rival side contentions, it may be noted that a plain reading of grounds of detention indicates that the Detaining Authority has not taken into consideration the possibility of resorting to the remedy

of cancellation of bail, granted to the petitioner. This is therefore a case of non-application of mind as per settled proposition of law by a Division Bench of this Court in Letters Patent Appeal No.1056/99 in Special Civil Application No.8650/98 decided on 15th September, 1999 in the case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate. In that case, the facts were similar. The Detaining Authority did not consider the question of cancellation of bail, while detaining the detinue. The Court held it to be a case of non-application of mind rendering the order vitiated.

6. In this view of the matter, the petition is allowed. The impugned order of detention passed by the District Magistrate, Bhavnagar, on 8th February 1999 in respect of the petitioner Vedva Vagri Shamjuben Dhamabhai, is hereby set aside with no orders as to costs. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly.

[A.L.DAVE, J.]

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